SOCIAL CARE FOR WORKERS WHO SUFFERED INJURY TO HEALTH IN THE COURSE OF THEIR PROFESSION

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I. Introduction

In modern societies the conditions of human existence are realized by work organized through society, which is characterized by great natural resources, new techniques, and the use of complex technologies. However, the tools used in the course of work do not only aid in man's productive work but also endanger his health, physical safety, his life.

It is the aim of Hungarian statutes of labour to protect the workers of danger impending in their employment with the modern *labour health regulations* on the one hand and to give the worker, in case of impaired health and in a many sided mode through the means of *compensation*, *social insurance* and *rehabilitation* on the other.

Hungarian labour health regulations have been changed recently[1]. The conceptual basis of the new regulation is that labour safety is a planned, preventive, complex activity that is an integral part of production. Labour safety is the task of the state, however both the trade unions and the workers play an important part in its organisation and control. The provision of law – among others – determines in detail also the employer's duties as regards labour safety. The Labour Code says the following: "It is the task of the employer to guarantee the conditions of a healthful and safe work; in this frame the employer is obliged to improve systematically the circumstances of work and, if necessary, to undertake – even *over and above adherence to the pertaining regulations* – all measures at his disposal, to eliminate any danger that may threaten the health and the safety of the workers."[2]

Thus the provision quoted is not satisfied by an attitude of the employer that is according to the law, but expects more than that: an *active, preventive activity*. This is the basis of the strict financial responsibility of the employer in case of an industrial accident and occupational disease. A characteristic trait of this responsibility is that the culpability of the employer is not a condition and that the responsibility embraces compensation for the entire damage.[3]

In case of injuries through industrial accidents and impaired health through occupational diseases it is the task of the state to guarantee the

health services the purpose of which are to restore the health and the work capability of the worker as far as possible and/or to enable the worker to undertake some other work. (To the above mentioned services belong e.g. medical examination, medical treatment, hospital treatment, transport by ambulance car, etc.)[4] Besides these services in kind, the injured worker and the one suffering from occupational disease is also entitled to so-called accident provisions as *financial provisions*, and, in case of his death his family is entitled to the latter.

Medical rehabilitation is to be guaranteed by the above-mentioned health services. A special statutory provision renders the promotion i.e. realization of the professional rehabilitation first of all the responsibility of the employer, here, however, also regional administrative organs have an obligation to cooperate. The major methods of professional rehabilitation are as follows: transfer to some other scope of activity or ther working place, or, perhaps to some other employing organisation, to re-educate i.e. retrain the worker as well as to convert the working place (and or the scope of activity), to adjust to the changed work capacity[5].

II. The employer's financial liability

1. *Basis of the liability and possibility of exemption*

"The Employer is completely responsible to the worker for any damage caused within the frame of the employment, without regard to his culpability. Employer is exempt from this responsibility only in case he can prove that the damage was caused by an unavoidable cause by no fault of his or through the unavoidable behaviour of the damaged person. In default of the said he is exempt from the part of the damage caused by a culpable behaviour of the worker." (LC, § 62.).

Thus the responsibility of the employer is a material i.e. objective responsibility. This responsibility is based on the relation of cause and effect existing between the operation of the enterprise and the damage originating from this, in the frame of the worker's employment.

The most typical case for the financial responsibility of the employer is the damage caused by an accident that happened to the worker in the frame of his employment. According to the usual practice an *accident* is a single, external impact hitting the organism suddenly or for a short time, independently from will that may cause injury or death. Another typical case of damages caused by the employer to the worker is damage originating from an occupational disease. *Occupational disease* is a disease thacame about through a special peril of the worker's occupation. The occupational diseases for which the employer is responsible without his culpability are contained in a list in the annex of a statutory provision.[6] This list indicates 34 occupational disease-groups (e.g. poisoning by lead and its compounds, simple cancerous disease of the skin, silicosis with or withous pulmonary tuberculosis, damaged hearing due to noise, etc.) and, besides giving the medical name of the disease also mentions the scope of activity

(and/or working places) where, as a consequence of the work undertaken there, the occurence of the disease in question is reckoned as an occupational disease.

Following from the above, two preconditions are necessary that the financial responsibility of the employer concerning the damage to the worker originating from his illness could be determined regardless of his culpability:

a) the disease must figure in the list of occupational diseases indicated in the annex of the statutory law, and

b) it is necessary that the disease occur in a scope of activity (and/or working place) which the said list mentions as a place of occurrence. Thus the occupational disease determined by the statutory law is not equivalent to the concept of "occupational harm" or "workplace harm" used by physicians but is much more restricted.

Besides accidents and occupational diseases the employer has a responsibility in case of culpability, only[7]. Such culpability is, e.g. an intentional or negligent violation of work safety regulations on the part of the employer.

The correct meaning of the regulations of § 62 of the labour code is expounded best in the standpoint No. 29 of the Labour College of the Supreme Court.

a) According to this standpoint the employer is responsible for any damage connected with injury to life, health or bodily safety of his worker if it resulted in connection with any activity undertaken in the course of fulfilling duties within the employment or duties that are a consequence of the employment. The concept of *activity pertaining to the frame of employment* is understood rather broadly by the standpoint. It regards the activity of the worker as belonging to this sphere even if he was ordered temporarily to undertake work not belonging to his scope of activity or to work with some other employer, if he undertakes some preparatory or completing activity necessary to realize this work, if he satisfies personal needs, e.g. takes a bath, if he undertakes work outside his working place, at the order of the employer, if he does social work[8] if the employer transports the worker in his own car or in a hired car from his home to his working place and back (road accident). However, legal practice does not regard any accident suffered during public communication and/or public communication itself as pertaining to the employment, if the accident happened on some public transportation means or on the road and/or while walking on the footpath.

b) The employer is exempt from any responibility if he can prove that the damage (the accident) was caused by some *unavoidable cause outside the scope of activity*. Standpoint No. 29 of the Labour Board of the Supreme Court regards causes belonging to the scope of activity of the employer in general the ones originating from the personal attitudes in connection with the activity of the employer in the course of his tasks, the property of the material, installation, equipment and energy applied, their state, handling

and operation. The cause bringing about damage is qualified as being outside the scope of activity of the employer if it is independent from the employer's activity, viz. there is no causal relation between the cause giving rise to damage (accident) and the employer's activity.

This relation takes on a specific form in case the worker does his work with a constant nature or systematically outside his company seat and in the course of his work activity the worker is exposed to danger of accident, due to the character of the task and the circumstances of the activity, but for reasons beyond his control (e.g. employees of the Sanitary Authorities, postmen, chimney-sweeps, people doing on-site repair-installation work, etc.). In such a case the causal relation between the scope of activity of the employer and the cause giving rise to the accident can be determined on the basis, that the worker has to undertake the work in the given circumstances and also the employer has to reckon with connected accident danger-situations. Therefore, the employer cannot be exempted from his responsibility for accidents occurring in the course of such work activities on the basis that the accident occured due to a cause outside his scope of activity

According to statutory provision, the employer is responsible also for causes outside his scope of activity, if the cause of the damage could have been objectively eliminated by the employer.

According to the standpoint of the Supreme Court unavoidable is any impact that cannot be hidered during the time at disposal at the objective, given level of technology, of technical possibilities. For instance, a stroke of lightning, as a natural force is outside the employer's scope of activity, however, in a given case it can be expected from the employer to eliminate damage by installing a lightning conductor.

c) The behaviour of the worker exempts the employer from responsibility if the danger was caused *only and solely* by the worker – independently of the fact if the activity causing the damage was a culpable i.e. blameable one or not – and was *unavoidable* or rather *inevitable* on the part of the employer. An employer had the possibility of exemption in a case when the worker jumped from the operator's cage of a crane from a great height, with suicidal intention.

If the occurrence of the damage cannot be traced back exclusively to the worker's behaviour but also a cause might have played a part which could pertain to the employer's scope of activity or, if though outside this scope of activity, it could have been eliminated on the employer's part, consequently the employer cannot be exempted from responsibility. In such a case a basis for dividing the damage can only be the culpable behaviour of the worker. Thus, for instance, if the employer is aware of the fact that the worker carries out the work by infringing the labour protection regulations and the employer does nothing against it, or, perhaps even expects the worker to do so, or orders him to do so, there can be no dispute concerning that the damage was caused exclusively by the worker's inevitable behaviour.

According to standpoint No. 29 of the Supreme Court it cannot be stated that the danger was caused exclusively by the behaviour of the in-

jured worker if it cannot be ascertained unequivocally as to how the accident has really happened.

The above regulations concerning the financial liability of the employer do not prevail in full measure concerning all employers. The financial liability of *private employers* is regulated somewhat differently by the Labour Code. Accordingly the dispositions of § 62 of the Labour Code have to be applied with the difference that privat employers are exempt from responsibility if they can prove not to be culpable in the occurrence of the injury.

2. *The measure of employer's responsibility, the sphere of damages to be paid as compensation.*

According to the first section of § 62 of the quoted Labour Code, if the employer is responsible for the damage due to injury to the life, health or physical safety of the worker, the employer has to compensate for the *entire damage* of the worker. A special statutory provision determines the sphere of damages to be compensated for and the mode of their calculation.[9] According to § 1 of this statutory regulation by damages to be compensated *a)* the income lost due to the injury, *b)* damages in materials (material damage), *c)* costs connected with the injury as well as *d)* damage not related to property have to be understood.

a) As *income lost*, the damage has to be refunded for the worker suffered by losing income due to disability to work because of the injury and/or decrease in ability to work or because his income is less than before the injury. Also the damage has to be compensated that the worker forestalls through extraordinary work performance despite a major physical deficiency resulting from the injury.

As income lost in the sphere of employment lost wages and the monetary value of the systematic services has to be refunded the worker is entitled to on basis of his employment, over and above wages, if he systematically made use of these prior to the injury (e.g. uniform, benefits in kind, etc.). As income lost outside the employment other, systematic earnings have to be compensated, lost because of the injury.

b) Material damage. Under this title all damages of the worker have to be refunded that were caused by the injury to his clothing, personal belongings or other property.

c) The employer is obliged to pay all costs of the worker that were necessary to avert the consequences of the injury (e.g. surplus costs of nursing at home), as well as all other justified costs related to the injury, (e.g. costs of relatives in connection with visiting the injured person, surplus costs of improved diet of the injured person, expenses paid for any activity that the injured person did himself before the injury, e.g. cultivating his garden, etc.)

d) The employer is obliged to pay the *worker's damages not related to property* if the injury made the workers' participation in social life or his life as such permanently or highly difficult. When examining the existence

of damage not related to property, the court takes into consideration the measure of inconvenience caused to the worker by the consequences of the injury. A very severe disadvantage that affects the worker for life or for a long time (e.g. loss of a limb, distortion, paralysis) may especially give reason to make the employer compensate for damage not related to property. From this viewpoint law practice deems highly important as to how far the worker's chances of employment, cultural life, games, social life chances have become restricted because of the damage. In this connection also the age, individuality, inclinations and former way of life are paid attention to.[10]

e) Should the worker lose his life due to the injury the compensation is due to his *relatives*. In such a case the persons supported by the worker may claim compensation making up for the support in a sum that guarantees to satisfy their requirements at the level prior to the injury – taking into consideration also their actual income. Over and above this, the employer is obliged to refund the material damage of the relative related to the injury as well as all justified expenses.

f) Also an allowance may be established as compensation. If the compensation serves the maintenance of the worker or his relative and/or completion of his (their) maintenance, in general, an allowance is to be established.

When calculating the sum of compensation, certain sums have to be deduced from the compensation. Thus, for instance, provision in the frame of social insurance; the sum the worker could have earned by utilizing his labour or could have earned in a given situation according to expectances except the income achieved through extraordinary work performance; the sum paid on basis of a life- or accident insurance contract drawn up by the employer in favour of the worker.

3. *Enforcement of responsibility*

The statutory provision obliges the employer to request the worker to put forward his claim for damages within 15 days after the injury. The employer has to give a written justified answer to the worker to his claims within thirty days and pay compensation within 60 days.

Independently of the employer's answer, the worker – to validate his claim for damages – may turn with the period of prescription, to the *Arbitration Court of Labour*. The period of description is 3 years, in general. Within 30 days after service, the worker is entitled to turn to the *Court of Labour* against the decision of the Arbitration Court of Labour. The discontinuance of the worker may be undertaken by the Trade Union. The lawsuit, is free of charge.

An *appeal* can be lodged against the verdict of the Court of Labour with the county court.

Concerning further legal redress, the possibility is given for recision of judgement and/or lodge a legal complaint in lawsuits concerning compensation for accidents or occupational diseases, within the same frame as permitted by the statutory regulation in any other civil action.

Should the dispute be settled – without any legal procedure – before a Court of Arbitration, a *new process* can be started before the Court of Labour against the decision of the Court of Arbitration within six months after the judgement goes into effect. This request may be based on facts or evidence that had not been formerly judged in the course of the labour dispute presuming that in case of judgement this would have resulted in a more advantageous decision for him.

III. Accident care by social insurance and other benefits rightful to the injured person

1. *General features of statutory provision*

It is the unified social insurance law that regulates the social insurance services rightful to the worker in case of industrial accidents of occupational diseases.[11] The law states as a basic principle that both the persons who suffered industrial accidents and their relatives are to receive *increased care* (§ 2.), on the other hand and it regulates in an *independent chapter* separated from other services those due in case of industrial accidents and occupational diseases on the other.[12]

According to these provisions workers damaged through industrial accidents or occupational diseases are entitled to *more favourable services* and of *greater extent* than those who were taken ill or became disabled through some other cause.

2. *The concept of industrial accident and occupational disease*

According to the law "an industrial accident is the accident the insured person suffered during work in his sphere of activity or in connection with it and/or during going to work or returning to his apartment (quarters). Industrial accident is also the one the insured person suffered while undertaking social work or taking advantage of certain social insurance attendances."[13] This definition embraces a wider circle of accidents than the one developed by the Labour Board of the Supreme Court concerning industrial accidents from the point of the employer's financial fiability. The most important difference is in the qualification of street accidents the worker suffers while going to work or to his home from the workplace and/or his quarters. In the concept defined by the social insurance law also these accidents belong, while concerning the concept valid from the point of employer's responsibility – as already mentioned – any accident the workers suffered while travelling to and from his working place is qualified as an industrial accident only in case if it happened while travelling by a car in the possession of or hired by the employer.

The concept of accident as well as that of occupational disease is identical both in the social insurance law and the statutory provision concerning the compensation to be paid by the employer.

3. *Sphere of persons entitled to advantages*

The sphere of persons entitled to accident care has been widened gradually. From this view, the statutory laws that came into force in recent years are of special importance that widened of those entitled to care also to embrace people participating in new forms of enterprise.[14]

Accordingly – over and above those on the payroll, or employed as members of a cooperative – all who undertake any activity useful from the viewpoint of society are entitled to accident care. So, for instance artisans, private tradesmen, members of economic associations and their family members, performing artists and teachers of art, lawyers, those undertaking social work, persons ordered to perform temporary work-duties, students, persons doing complementary activity, etc. However, also different provisions pertain to services.

4. *Services in kind and financial (pecuniary) aids*

The injured person is entitled to services in kind defined by the Public Health Bill, as, for instance medical examination, medical care, hospital treatment, blood-supply, transport by ambulance. These services are free of charge, The injured person is also entitled – against a fee – to pharmaceuticals, medicinal baths and other means, procedures aiding his recovery.

Pecuniary aids are regulated by the law concerning social health and it makes a difference between two groups: the injured person is entitled to accident sick pay in his own right and to accident retiring allowance in his own right (this may be accident allowance and accident disability pension). In case of his death his relative is entitled to so-called relative's accident retiring allowance (such a retiring allowance is the accident widow's pension, indemnification, accident orphan-care and accident parent's pension.) The conditions and the measure of these pecuniary aids are, according to the statutory provision as follows:

A) *Accident services in his own kind:*

a) To *accident sickpay* is entitled the person who becomes disabled due to an industrial accident or occupational disease viz. cannot undertake any work because of his health and because he is in need of medical care or, because of lack of appliances[15]

While in case of other sickness, the period of sickpay is one and/or two years, its amount is 65 and/or 75% of the average daily earning, the accident sickpay is not limited in time, the injured person is entitled to it for the duration of his disability to work and its measure is equal to *100% of the worker's average daily earning.*[16] The injured person is entitled to this sickpay independently from the time spent in employment.

b) To *accident allowance* is entitled the person whose working capacity diminished by over 15% due to industrial accident but who did not become disabled and thus does not receive accident retirement allowance. The worker is entitled to the allowance also if he has no earning-losses. The sum of

the allowance – depending on the degree of working capacity diminishment – is 8. 10, 15 or 30% of the average monthly earnings. The payment of the allowance ceases if the health of the injured person improves to a degree when the working capacity diminishment does not exceed any more 15%.

c) The worker is entitled to accident disability pension if he lost at least 67% of his working capacity – mainly because of an industrial accident – and does not work regularly or, if his earnings are far below those of having had before his accident. Silicosis patients are entitled to accident disability pension – at certain conditions – already at a 50% diminishment of their working capacity. Service time is no precondition to accident disability pension – as in case of other disability pensions. The sum of the accident disability pension, depending on the time of service and the average monthly earnings of the injured person is 60, 65 and/or 75% of the average monthly earnings. The sum of the pension increases alter each year spent in service by 1% of the average monthly earnings and may thus be up to 100% of the average earnings. Entitlement to accident disability pension ceases if its preconditions are no more given. In such a case accident allowance has to be determined. Should the injured person's state of health undergo a change, the sum of accident allowance as well as that of the accident diasability pension have to be equally modified.

B) *Relative's accident retiring allowance*

Following the worker's death his wife, his divorced wife or the one living separately, his partner in life, the disables husband, the orphan and the parents are entitled to relative's retiring allowance. Relatives are entitled to accident retiring allowance if the injured person died because of an industrial accident. In exceptional cases relatives are entitled to accident retiring allowance if the injured person did not die because of an industrial accident but was entitled to accident disability pension at the time of his death.

The most important benefit of relative's accident retiring allowance is, compared with other social health services, that the relatives are entitled to accident retiring allowance independently from the *time spent in employment by the injured person.*

a) The widow is entitled to permanent widow's *pension* because of death caused by industrial accident, without regarding her age, state of health and number of children. (While in other cases, the precondition of permanent widow's pension is to have completed her 55th year or state of disablement or, that she has to care for at least two children.) If, however, the widow is a divorcee, she is entitled to permanent widow's pension at stricter conditions. A husband is entitled to widower's pension if he is disabled and prior to her death his wife has kept him for the most part, in her own household or the court has determined an alimony for the husband. The sum of accident widow's pension is half of that of the pension the injured person was or would have been entitled at the time of death. The widow's pension comes to an end if the woman remarries.

b) To *indemnification* (pecuniary compensation) is entitled the person whose right to permanent accident widow's pension ceases because of marriage and requests pecuniary compensation. The sum is that of one years's eidow's accident pension.

c) Accident orphan allowance is due to the own child of the dead worker (even if born out of wedlock), his step- and adopted child. Orphan's allowance is due to the foster-child, brother or sister and grandchild onyl if the deceased supporte them in his own household and the child has no relative obliged (and capable) to support it.

Orphan's accident allowance is to be paid till the orphan completed its 16th year or, in case of studying on, till it completed its 25th year. Orphan's allowance does not cease through neither the marriage of the living parent or of the orphan, neither adoption of the orphan.

Orphan's allowance is half of the widow's pension. If, however, both parents of the orphan die or the living parent becomes disabled, or if the orphan is left by the living parent and not cared for (supported), orphan's allowance is identical with the sum of widow's pension.

d) Parent's pension is due to the parent who was disabled already at the time of his child's death and who was supported to a dominant part by the child, one year prior to the child's death. Step- and foster parent is entitled to parent's pension only in case if he supported the child for at least lo years and was already disabled at the time of the child's death. The sum of parent's pension is identical with that of the widow's pension. If several persons are entitled to parent's pension, it has to be divided uniformly among them.

The total sum of relative's pension may not exceed that of two and a half times the widow's pension.

5. *Administrative organization of social insurance*

The management, supervision and control of social insurance was the task of the National Council of Trade Unions in the past 20 years and the trade union organs also played an important part in realizing social health tasks.

In 1984 the statutory provision changed the management of social insurance[17]. At present management of social insurance is realized by state organs with the cooperation of social insurance councils. The social insurance councils are made up from representatives of the trade unions and other trade federation organs as well as from organs with autonomous character of representatives of certain state organs. The aim of the National Social Insurance Council is to reconcile, to represent the interests of those entitled to social care, to aid state management and to ensure the social control of social care. Beside the conceptual management of the National Social Insurance Council, county and/or capital social insurance councils operate in the counties and the capital city as well as social insurance councils in employer's organisations, as autonomous character organs.

The tasks of central management are realized by a national competence organ, the National Social Insurance Management that belongs to the di-

rect control of the Council of Ministers. Its director and his deputies are nominated by the Council of Ministers.

The tasks of social care are realized in part by the management organs of social care (the county social care managements and their branches, the National Pensions Office and other organs) and in part by the so-called payment-places realized at the employers' organisations, Establishing a payment-place is made obligatory to employers' organisations by the statutory provision in case at least loo persons are in their employment.

6. *Enforcement of claim*

Accident care can be claimed in word or in writing, certain modes of care, however, in writing, only. The claim can be enforced for a maximum of 6 months retroactively.

The injured person has to claim accident sickpay from the social care payment place operating at the employer or, in lack of such, from the social care management competent according to the employer's head-quarters.

The claim for accident retirement allowance has to be put forward on a printed form for that particular purpose at the social care management competent according to the place of residence of the injured person, while the relative's claim at the National Pensions Office.

The claim for accident retirement allowance can be enforced within two years, in exceptional cases within 3 years after the accident happened (and/or the occupational disease was stated).

The claimant has to put forward the data and testimonies needed for judgement, if required he has to appear for a personal interview, as well as submit himself to medical examination and/or hospital survey. For the sake of investigating the circumstances of the accident, the social care organ has the right to local inquiry. In such cases the employer is obliged to give the necessary information.

The social care organ decides in the form of a resolution about fulfilling or refusing the accident retiring allowance claim, about increasing or diminishing the sum of retiring allowance, termination of entitlement, etc. Concerning sickness care claim only in case if it refuses such a claim. If the injured person or the relative finds this resolution deleterious for any cause he may lodge an "objection" with the social care council which is the first degree legal redress organ and the competence of which embraces the operational region of the employer's paying place. Concerning the resolution of the first degree legal redress organ an "appeal" can be lodged with the countly social care council, which is the second degree legal redress organ. (In exceptional cases it may also act as first degree organ). In cases defined by the statutory provision the resolution of the council may be attacked by a suit at the Labour Court. Thus, for instance, in the question of entitlement to accident retiring allowance, determination of service time, in the matter if an industrial accident occurred or not as well as against a resolution obliging to repay and a resolution obliging to compensate by the title of attributability.

7. *Funds (Coverages) of social care costs*

To cover social care costs, employers pay social care contribution, the insured persons pay pension contribution. Expenses exceeding revenues are covered by the state. The social case contribution paid by employers is not a uniform sum. Thus, e.g. state enterprises, cooperatives and other economic organizations – with the exception of agricultural enterprises – pay 30% of the wages costs, central and council budgetary organs as well as social and business federation organs 10% of wages and wage-character payments, while agricultural enterprises have to pay 23% of wages to the budget as social care contribution. Certain employers are exempt of payment obligation, so e.g. enterprises belonging to the branch of cultural services. The insured persons are obliged to pay pension contribution after their wages, and this sum may be, depending on the sum of monthly wages, its 3 – 15%[18].

IV. Rehabilitation

A) *Medical rehabilitation*

The aim of medical rehabilitation is to ensure through medical care the restoration of working capacity of persons with limited working capacity and/or to develop it to the possible degree. To prevent working capacity diminishing and/or hinder its increase the physician has to determine fitness for work and the health conditions of saitable work circumstances. It is also the physician's duty i.e. task to survey adherence to these conditions.[19]

B) *Professional rehabilitation*

The most recent statutory provision concerning professional rehabilitation introduces a new terminology for persons to be rehabilitated and calls them "workers with a changed working capacity" – contrary to the former terms, "disabled", "diminished working capacity" and "limited working capacity".[20]

According to the definition of the statutory provision, workers and employees on the payroll, working as cooperative members, working as outworkers or outworker membership employment, who

a) because of working capacity change owing to the deterioration of his health is permanently incapable to realize full value work without rehabilitation measures but does not receive social insurance provision;

b) receives accident allowance because of an industrial accident or occupational disease and is permanently incapable to realize full-value work at his employer;

c) because of tuberculosis cannot be employed at his employer because of statutory provision prohibition;

d) became disabled due to a former industrial accident or occupational disease and his employment ceased because of a disabled pension, however, enters again into employment at his employer since he has become able to work;

e) was demobilized from the armed forces because of a changed working capacity and/or declared unfit for health reasons.

The concept thus is not restricted to the victims of occupational diseases, but does not embrace the entire circle: those disables since birth do not figure here.

The aim of employing workers with a changed working capacity (to care for their employment rehabilitation) is according to the statutory provision: to guarantee them to undertake work suitable to their state of health, profession, following medical rehabilitation.

Employment is the commitment first of all of the employer where the worker had been employed at the time his changed working capacity was diagnosed. The employer has to care for this task by guaranteeing a suitable scope of activity, by changing the work circumstances, if needed, by teaching or training. For these tasks – in certain circumstances – the employer may request financial aid. Its sum is 40% of the wages paid to workers with a changed working capacity.

Should the employer be unable to employ the worker with a changed working capacity, promoting employment is the task of council (administrative) organs, who try to get the worker employment at some other employer, or, perhaps in a so-called social working place or a so-called protective working place. With the aim of rehabilitation, the councils may establish working places from their own financial means.

If the worker with a changed working capacity accepts the suggested measures (new work-place, training, etc.) he is entitled – in certain circumstances – to a rounding out his wages. The rounding out may be up to 80–100% of the former average earnings.

If the employment of the worker with a changed working capacity cannot be realized by either the employer or the council organ then, at certain conditions, a temporary or systematical social allowance has to be determined and paid. The condition of such an allowance is – among others – that the working capacity be impaired by 50%.

The rehabilitation procedure is not of an obligatory mode, it may be initiated by the worker himself or by the physician, within the employing organisation, with the so-called official in charge of rehabilitation. This official is obliged to take steps within 8 days: he may either put forward a suggestion to the employer concerning employment or call together the employer rehabilitation committee. The rehabilitation committee is obliged to put forward a suggestion to the worker concerning employment, within 15 days. If there is no possibility for employment within the scope of the worker's ability the committee has to inform thereof the local rehabilitation committee that operates beside the council and that has to put forward a rehabilitation suggestion within 30 days. On basis of this

suggestion the rehabilitation delegate (representative) is obliged to take steps within 15 days. The worker has the right to turn to the labour arbitration court against this measure with a request eithin 15 days. If the worker disputes the scope of activity or the work place suggested for him not to be suitable because of his health he may request a scope of activity suitablity examination undertaken by the work physician or the district physician and disputing their opinion he may request a second degree judgement concerning suitability of scope of activity. The second degree organ is a physicians' committee.[21]

Besides the introduced, general provisions special statutory provisions pertain to certain worker-categories. Thus miners suffering from *silicosis* receive special care according to the statutory provision. It prescribes, among others, that after being transferred they have to be examined yearly and the dust damage of their work-place controlled regularly. They may not remain in a silicosis-dangerous workplace even at their own responsibility.[22]

Concerning the employment of workers with a *highly changed working capacity* the Minister of Health prescribes the establishment of so-called protective working places.[23] A person is judged to have a highly changed working capacity whose working capacity has changed by at least 50% and whose employment could not be guaranteed among general circumstances, or who is mentally deficient in a mild or medium severe degree; who is blind or has an impaired sight; who is highly limited of motion; and who is sumulatively deficient. A protective working place is a working place established within some employing organisation where the work is done in specific circumstances, at increased protection and if needed, at constant survey and control.

To aid the employment of blind people and those with an impaired sight the statutory provision prescribes that to operate a telephone subcentre a blind or impaired sight person *has to be* employed if the sub-centre performance is not above 20/200 extensions.[24]

For persons *limited in motion* who possess a certain type car the statutory provision orders to guarantee fuel-assigment free of charge.[25]

FOOTNOTES

[1] Paragraphs No. 51 – 54 of the Act. II. of 1967 the Labour Code, as well as the 47/1979. (XI. 31.) Labour Code order concerning labour-safety. These statutory regulations are completed by the orders of the Minister of Health: No. 3/1979. (V. 29.) MH., the MH No. 2/1981. (II. 7.) concerning general health requirements of working places, the MH. No. 4/1981. (III. 31.) concerning medical examination and giving expert opinion reaarding scope of activity capability, and further the MH No. 6/1982. (VI. 12.) about the protection of health and physical safety of women and those under age.

[2] Section (1) of § 51 of the Labour Code

[3] Sections (1) and (2) of § 62 of the Labour Code

[4] The Act. II. of 1972 on public health

[5] The No. 8/1983. (VI. 29.) Minister of Health, Minister of Finance order.

[6] Annex No. II of the order No. 17/1975/VI. 14. of the Labour Code

[7] Section No. (2) of § 83 of the order No. 48/1979. (XII. 1.) of the Labour Code

[8] The employer's liability concerning damage while undertaking social activity is also expressed in the Labour Code Order No. 48/1979. (XII. 1.), modified in 1979. Section (4) of § 83 of the Labour Code Order No. 48/1979. (XII. 1.)

[9] Minister of Labour Order No. 26/1980. (XII. 20.) MüM concerning compensation for damages in the life, physical safety or health of the worker.

[10] Directive No. 16 of the Supreme Court about liability of harm i.e. damage not relating to property.

[11] Act II. of 1975 on social security.

[12] Chapter V. of the Statute No. II (1975): Accident care.

[13] Section (1) of § 77 of Act II. of 1975.

[14] Also the Labout Code No. 51/1981. (X. 27.) order as well as the Labour Code No. 66/1982. (XII. 4.) order

[15] Certain services specified in case of accident are also due in case of occupational diseases therefore, in the following, occupational disease is to be understood for accident.

[16] This measure was prescribed by § 4 of the Labour Code Order No. 55/1980. (XII. 20.) that took effect on January 1, 1981.

[17] Law-decree No. 5 of. 1984. Concerning its enforcement see Labour Code decision No. 1009/1984. (XII. 31.)

[18] § 23 of Labour Code Order No. 51/1981. (X. 27.)

[19] § 41 of Act II. of 1972 on about public health.

[20] Ministry of Health – Ministry of Finances Order No. 8/1983. (VI. 29.) concerning employment and social care of workers with a changed working capacity.

[21] Minister of Health Order No. 4/1981. (III. 31.) on physician's examination and opinion about capability in scope of activity.

[22] The joint directive No. 61/1962. of the Minister of Heavy Industry, the Minister of Labour and the National Minetechnology Inspectorate concerning protection of mine workers who suffer from silicosis and are qualified as having a diminished working capacity.

[23] Minister of Health Order No. 12/1983. (XI. 20.) about organisation and operation of protective workplaces.

[24] Minister of Health Order No. 13/1983. (XI. 20.) about the employment of blind and persons with impaired sight as operators of telephone sub-centres.

[25] Minister of Health order No. 5/1980. (VII. 12.) concerning fuel assignment guaranteed for persons limited of motion.

GESELLSCHFTLICHE FÜRSORGE FÜR WERKTÄTIGE IM FALLE DER GESUNDHEITSSCHÄDIGUNG WÄHREND IHRER BERUFSAUSÜBUNG

(Zusammenfassung)

Laut der Abhandlung ist die Aufgabe der arbeitsrechtlichen Rechtsregeln in erster Linie die Vorbeugung der Gesundheitsschadigungen durch den Ausbau des zeitgemäßen Arbeitsschutzes, in zweiter Linie – falls die Gesundheitsschädigung eingetreten ist – die vielseitige Sorge für die eine Schadigung erlittenen Werktätigen durch die Mittel des Schadenersatzes, der Sozialversicherung und der Rehabilisation.

Im ungarischen Arbeitsrecht erwarten die Regeln des Arbeitsschutzes von den Arbeitgebern eine aktive präventive Tätigkeit. Im Falle der Berufskrankheit oder des Betriebsunfalles ist auch die strikte materielle Verantwortung darauf aufgebaut. Für die Verantwortlichkeit ist es charakteristisch, daß die Schuld des Arbeitgebers keine Voraussetzung ist und sich die Verantwortlichkeit auf die Vergütung des totalen Schadens erstreckt, den Sogenannten nicht materiellen Schaden und den Schaden der Angehörigen inbegriffen.

Im Falle eines Betriebsunfalles und einer Berufskrankheit ist die Sicherung der sanitären Dienstleistungen, deren Aufgabe die Wiederherstellung der Gesundheit und Arbeitsfahigkeit der Werktätigen soweit als möglich, bezw. die Befähigung des Werktätigen zur Ausübung einer anderen Arbeit ist, die Pflicht des Staates.

Die Sicherung der ärztlichen Rehabilisation bildet die Pflicht der sanitären Dienstleistungen. Zur Förderung der gewerblichen Rehabilisation bezw. zu deren Durchführung verpflichtet eine separate Rechtsregel vor allem den Arbeitgeber, aber zur Mitwirkung sind auch

die Territorialbehörden der Staatsverwaltung verpflichtet. Die wichtigsten Methoden der gewerblichen Rehabilitation sind die Versetzung des Werktätigen in ein anderes Arbeitsgebiet, auf einen anderen Arbeitsplatz, eventuell zu einem anderen Arbeitgeber, dann die Berufsumschulung, die Umgestaltung des Arbeitsplatzes (Änderung des Wirkungskreises), das heißt, seine Anpassung an die sich veränderte Arbeitsfähigkeit.

ОБЩЕСТВЕННОЕ ОБЕСПЕЧЕНИЕ РАБОТНИКА В СЛУЧАЕ ПОВРЕЖДЕНИЯ ЗДОРОВЬЯ В СФЕРЕ ПРОИЗВОДСТВА

Как упоминается в статье целью трудово-правовых норм права в первую очередь является предоторащение повреждений здоровья с установлением современной охраны труда, во вторых – в случае последовавшего повреждения здоровья многостороннее обеспечение пострадавшего работника средствами возмещения ущерба общественного страхования и реабилитации.

В венгерском трудовом праве нормы охраны труда требуют от работодателей активной предотвратительной деятельности.

На этом основывается строгая материальная ответственность работодателя в случае получения работниковм производственной травмы или профессиональной болезни.

Характерная черта ответственности в том, что вина работодателя не является условием и ответственность распространяется на возмещение полного ущерба, под этим понимается т.н. неимущественный ущерб и к нему относящийся ущерб.

При несчастном случае на производстве или профессиональной болезни задача государства в обеспечении такого медицинского обслуживания, цель которого восстановление здоровья и работоспособностиработника в возможной степени, т.е. определение работника на другую подходяшую работу.

Врачебную реабилитацию призвано обеспечить медицинское обслуживание К содействию, а также осуществлению профессиональной реабилитации особая норма права обязует в первую очередь работодателя, при посредствеадинмистративных областных органов.

Основные методы профессиональной реабилитации заключаются в переводе в другую сферу деятельности, на другое место работы, возможно в другой работодательный орган, в переквалификации, также как в переустройстве места работы (а также сферы работы), т.е. в приспособление измененной трудоспособности.